

# Guatemala

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## Energy law in Guatemala

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Derived from various world-wide factors such as the economic crisis and the fluctuation of fuel prices, the search for alternate energy sources has become imperative. This fact has led to the modernisation of regulatory legal frameworks.

Since 1884, when the first hydroelectric plant was established in Guatemala, the country's natural resources have allowed for the prosperous development of energy and power activities in the country. The generation, transmission and production of energy have had a quick growth during the last few years, contributing to the country's development.

The Guatemalan law splits the energy field into four activities: a) power generation; b) energy transportation; c) trading of energy and power blocks; and d) energy distribution. These activities can be conducted by the same individual or entity simultaneously, provided that they are carried out through different enterprises.

The Guatemalan authority in charge of studying and promoting the use of new and renewable sources of energy is the Ministry of Energy and Mines. The technical organ of the Ministry in charge of ensuring the fulfilment of the General Electricity Law is the National Electric Energy Commission. The law regulates general aspects related to energy production in the country.

### The General Electricity Law

The General Electricity Law allows the free participation in the setting up of energy generation plants without the need for approval by the regulating entity. The only existing limitations and exceptions for setting up an energy generation plant are the ones related to: i) the use of public-domain assets such as hydraulic and geothermal resources; ii) envi-

ronmental protection; and iii) the protection of individual rights.

Energy transportation can be freely carried out, provided that public-domain assets are not used. If they are used, the authorisation of the regulatory entity is mandatory.

Another important advantage is the liberty to set prices for power services. In the cases in which the regulatory entity's authorisation is mandatory, prices are not freely set.

The conditions and incentives offered by Guatemala for the development of power-related activities make it an attractive investment option.

In relation to the power generation, the existing conditions offer investors access to a competitive market. Even though energy transportation and distribution are regulated activities, the conditions established by the law are based on the same principles that underpin the competitive market model applicable to power generation.

As a result of Guatemala's natural resources and regulatory frameworks, the conditions are propitious for the development of power-generation projects, including the implementation of wind farms, hydroelectric, geothermic and coal plants. The growth of this field, and the respective analysis of these projects, has been supported not only by the government of Guatemala, but by private entities and organisations such as the Energy and Environment Partnership with Central America, supported by the Austrian government, and the Central American Bank for Economic Integration.

### Further developments

The Guatemalan government is also working on the establishment of the Guatemala-Mexico interconnection, which will provide additional energy for the country at competitive prices.

As part of the integral development of Guatemala, specialised law firms have had an active participation in such field. There have been recent important transactions related to

the energy industry, such as the negotiations with Ortitlan regarding a geothermal power plant which will generate power derived from the heat generated by the geothermic field located in the Pacaya volcano, located in the southern department of Escuintla; and the new 300MW Jaguar Energy coal plant.

Guatemala has an open market to foreign investment and has a broad macroeconomic framework able to support the growth of energy-generation projects. A specialised market is operating, generating competition by setting prices according to the country's needs. This sector has the potential to continue growing in Guatemala and to project itself into the Central American region and the south of Mexico.

## Financial and corporate

### Recommended firms

#### Tier 1

Carrillo y Asociados  
Consortium – Rodríguez Archila Castellanos  
Solares & Aguilar  
Mayora & Mayora

#### Tier 2

Arenales & Skinner-Kléé  
Arias & Muñoz  
Bonilla Montano Toriello & Barrios  
Quiñones Ibarquén & Luján

#### Tier 3

Aguilar Castillo Love  
Saravia & Muñoz

#### Tier 4

Central Law – Díaz-Durán & Asociados  
Lexincorp

The May 2009 murder of Rodrigo Rosenberg Marzano made world headlines when a video surfaced showing the prominent Guatemalan attorney predicting his own death days before it happened. What made the story more sensational was that Rosenberg implicated Guatemalan president Álvaro Colom and several others in the assassination plot. Rosenberg then outlined a scheme in which illegal funds were flowing through the public-private bank Banrural into non-existent social programmes run by Colom's wife. Colom denied the accusations and invited UN and FBI officials to participate in the government's investigation of Rosenberg's death.

While news reports focused on the salacious details of the murder, the coverage generally failed to offer deep analysis into the allegations proposed in Rosenberg's video. Lawyers in Guatemala find themselves in a delicate position – holding a great deal of respect for their murdered colleague but not wanting to exacerbate strain on the already fragile economic situation.

In a country known for having one of the highest rates of violent crime in Latin America, some lawyers point to Guatemala's larger problem as a more significant focus than the single case involving Rosenberg. As one interviewee says: "I would not want to take away from the importance of the situation but this happens every day." Many lawyers predict little real impact on business operations in the country other than an immediate downgrade by international economic rating agencies.

Recent bank failures have had a cleansing effect on Guatemala's financial system in terms of shedding foreign debt and streamlining the banking market. But security issues continue to deter investors from opportunities in the nation. While being largely an agrarian economy, Guatemala boasts untapped deposits of minerals and enjoys a moderate level of oil production – more than any of its central American neighbours. Expected bright spots for foreign investors in Guatemala in the future are infrastructure projects financed by private and multilateral lenders as well as the industry promised by the Cafta treaty.

Lawyers see access to microfinance as the key to fostering local enterprises that will help end the country's dependence on the US economy. Last year's trend-breaking drop in export and remittance revenue coincided with America's decline in retail spending. One interviewee invokes the adage: "When the US sneezes, the world catches a cold". "This time around the US has a cold," the lawyer says, "and we are beginning to sneeze."

### **Carrillo y Asociados**

The financial downturn provided Carrillo an opportunity to acquire fellow Guatemalan practice Beltranena de la Cerda y Chavez in a merger announced in February 2009. While the move is not typical of the legal market in Guatemala, competitors hold it is in line with Alfonso Carrillo's innovative approach to operating a law firm. "He's always introducing new things," one rival notes: "He's expanding and growing." Not all of Beltranena's lawyers participated in the acquisition, but it nonetheless represents a notable growth spurt.

Competitors and clients alike suggest it is Alfonso Carrillo's business savvy that sees him connect with all participants in a transaction, but clients point to Rodrigo Callejas as carrying out the footwork of the firm. One client notes Callejas' hard work at keeping all the parties at the table: "He demonstrated a lot of persuasion and a lot of skill in negotiations."

Renewable energy has been an active industry in Guatemala of late and the high demand for financing has brought Carrillo work in the nation's capital markets. Last year the firm's partners worked closely with US lawyers to complete a \$42 million note issuance on behalf of American geothermal developer Ormat Technologies. The bonds, financed by investment management firm TCW, will refinance Ormat's initial investment in the 20MW Amatitlan geothermal power plant being developed by Ormat's Guatemalan subsidiary Ortitlan.

The Canadian mineral company Firestone Ventures has kept the partners at Carrillo busy with acquisitions in Guatemala. In 2008 the company purchased 12 zinc and lead mining concessions, effectively doubling Firestone's operations in Guatemala.

#### **Leading lawyers**

Rodrigo Callejas  
Alfonso Carrillo Castillo

### **Consortium – Rodríguez Archila Castellanos Solares & Aguilar**

The partners of Consortium's local office are considered by rivals to be some of the top lawyers in Guatemala, but the firm's independent identity exposes the Consortium network's uneven integration. Still, there is a sense locally that the loose structure of a network fits the partners in Guatemala better than a fully-integrated regional management and competitors hold that the local office is the best established of all the Consortium branches. "They are managed [in a corporate style] with strong teams," a competitor says, adding: "It has been a very profitable organisation."

Among Consortium's clients is Citibank, which the practice represented in the latter's regional merger with the Cuscatlán and Uno financial groups. Recently, Consortium advised Citibank on its part in a \$100 million syndicated loan to regional appliance retailer Grupo M. The loan, led by Citibank and Dutch development agency FMO, will finance Grupo M's expansion of its chain across the region.

Another important client for Consortium is Pollo Campero, a multinational restaurant franchise. In 2008 Alfredo Rodríguez negotiated a business alliance between Pollo Campero and Eat Out, which operates throughout southern Europe, India and the Middle East. The unique alliance allows the companies to support each other's expansion in their respective regions.

The firm advised TCW's financing of the geothermal power plant project in Amatitlan, with Alejandro Cofiño negotiating a complex security structure that includes all current and future property, equipment and contractual rights.

#### **Leading lawyers**

Alejandro Cofiño Rodríguez  
Lionel Francisco Aguilar Salguero  
Alvaro Rodrigo Castellanos Howell  
Alfredo Rodríguez Mahuad

### **Mayora & Mayora**

The father-son team of Mayora & Mayora is recognised as a leader in the area of banking and finance by competitors, who note that the second generation is carrying the family firm forward. "Eduardo Mayora the son is a very brilliant person and I think he has managed to build on what his father has done," one rival says. Mayora & Mayora is also fortunate to have several well-respected partners who are not members of the Mayora family, particularly Rafael Briz, who competitors note is focused on the energy sector.

Several representative clients are mentioned by competing attorneys as having been particularly important for the firm, including Spanish energy producer Unión Fenosa. Recently, the practice has provided legal counsel for several corporate clients, including Philip Morris, Coca-Cola and Spanish modelling agency Grupo Krea.

Through their membership in the Bomchil Group and Lex Mundi network, Mayora & Mayora enjoys client referrals from around the globe. The firm also has relationships with many international law firms including Baker & McKenzie, Holland & Knight and Squire Sanders & Dempsey.

**Leading lawyers**

Rafael Briz Méndez  
Eduardo Mayora Alvarado  
Claudia Pereira Rivera

**Arenales & Skinner-Klée**

Well-known for its work in the real estate industry, Arenales & Skinner-Klée also has a longstanding presence in the banking sector. Competitors point to Alejandro Arenales as the most recognised face of the firm in commercial and real-estate transactions, and praise Alfredo Skinner-Klée as a smart, capable lawyer in banking and financial matters.

Clients praise the firm's work for both local and international players. One in particular was impressed by how the six-partner practice immediately proved itself adept at handling the needs of a large-scale entity. "Arenales & Skinner-Klée quickly got on board and was quite comfortable in dealing with a large organisation like ours," says one client.

Arenales & Skinner-Klée has recently shown prowess at advising international banking institutions on their entrance into the Guatemalan market. In addition to ongoing advice to new entrant Scotiabank, the firm has been retained by several prominent banks in Europe and south Asia to offer counsel on similar paths to the market.

**Leading lawyers**

Alejandro Arenales Farnier  
Alfredo Skinner-Klée

**Arias & Muñoz**

While Arias & Muñoz has a leading presence across the region, there is a sense among lawyers that the local office faces tough competition in Guatemala and may not enjoy the same profile as in other parts of central America. Still, the firm has a good reputation among clients for being able to offer global services that locally focused firms cannot. As one interviewee states: "The services they gave us were to the level of any global firm and we had very good results with them."

Arias has represented Walmart since the global retailer entered the market in 2006. At the end of 2008 Arias advised Walmart subsidiary Carhco over a merger with Guatemalan retailer La Fragua in which Carhco absorbed the local company's operations. The transaction involved arrangements with Carhco and La Fragua's minority shareholders, which numbered approximately 1,500 individuals.

In banking and finance Arias is known for representing some of the world's leading multilateral lenders and development finance institutions throughout the region, including

the IFC, the Inter-American Investment Corporation and Dutch development institute FMO.

**Leading lawyers**

José Augusto Toledo  
Liz Gordillo Anleu  
Jorge Luis Arenales  
José Orive

**Bonilla Montano Toriello & Barrios**

Noted for having strong ties in the mining and electricity sectors, the partnership of Bonilla Montano is recognised by competitors as having a strong structure going back several decades. As the founding partners enter their senior years, rivals consider the second-generation brother-sister team of Maria and José Guillermo Bonilla, as well as Lorena Barrios, to be providing new energy to the firm.

Barrios is particularly noted for her presence in the firm's strongest areas of practice. Most recently, she counselled the purchaser of a large-scale hydroelectric energy project in the Alta Verapaz district of Guatemala.

The firm has also been active in the real-estate market. Late in 2008 it advised Spanish hotel manager Barceló in the acquisition of a five-star Guatemala City hotel from America's Marriott. The purchase price is estimated at \$42 million.

**Leading lawyers**

Lorena Barrios  
José Guillermo Bonilla  
Maria del Pilar Bonilla

**Quiñones Ibargüen & Luján**

Quiñones Ibargüen & Luján is considered to be on the rise in Guatemala's legal market. Competitors highlight its work in the energy sector, specifically, representing the state-owned electricity company EEGSA (Empresa Eléctrica de Guatemala) as it opens to private investment. This speaks of the firm's growing presence in the market as well as the abilities of its staff. As one rival puts it: "They are very hard working, cutting-edge attorneys." In the words of another: "The future for them is very good."

One company that has benefited in a roundabout way from the escalation of infrastructure projects in central America is Caterpillar, which has provided much of the equipment that is paving roads and building facilities across the region. Marcos Ibargüen represented the financial arm of the heavy equipment manufacturer in negotiating loans for developers at work in Guatemala. Between

2008 and 2009, Caterpillar Financial provided some \$20 million in loans to businesses for their construction vehicles and equipment.

**Leading lawyers**

Marcos Ibargüen Segovia  
María Isabel Luján  
José E Quiñones

**Other ranked firms**

Known mainly for Juan Pablo Carrasco's work representing the Railroad Development Corporation in an historic Cafta arbitration case, **Díaz-Durán & Asociados** has benefited from the centralised marketing approach of the Central Law network. In Guatemala, the firm has been active protecting the local assets of multinational corporations, including Mexican building material supplier Cemex and Shell Oil.

*Leading lawyers:* Juan Pablo Carrasco de Groote

Since 2004 Gonzalo Menéndez and his team have operated as the local office of **Lexincorp**, a regional firm created from established practices in central America. Recently the firm has represented Palmas del Ixcán – a subsidiary of Texas-based Green Earth Fuels – in negotiating a syndicated loan for operations in Guatemala.